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**APPEALS BOARD  
UTAH LABOR COMMISSION**

**SUSAN BELL,**

**Petitioner,**

**vs.**

**IHC-LDS HOSPITAL,**

**Respondent.**

**ORDER OF REMAND**

**Case No. 20011334**

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Susan Bell requests review of Administrative Law Judge Sessions' denial of her claim for benefits under the Utah Occupational Disease Act, Title 34A, Chapter 3, Utah Code Annotated.

The Appeals Board of the Utah Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12, § 34A-3-302 and § 34A-2-801(3).

**BACKGROUND AND ISSUE PRESENTED**

Ms. Bell initially claimed workers' compensation benefits and, alternatively, occupational disease benefits for medical problems allegedly caused or aggravated by exposure to chemicals while working for IHC. Judge Sessions denied these claims and Ms. Bell requested Commission review. As a result of that review, the Commission set aside Judge Sessions' decision and remanded Ms. Bell's claims to Judge Sessions for additional consideration and issuance of a new decision.

Judge Sessions then issued his second decision in this matter. In this second decision, Judge Sessions dismissed Ms. Bell's workers' compensation claim for lack of proof of a work-related injury. Judge Sessions also denied Ms. Bell's occupational disease claim on grounds that: 1) Ms. Bell failed to provide timely notice of her occupational disease claim to IHC; 2) the alleged occupational disease—multiple chemical sensitivity ("MCS")—is not recognized as a disease by reliable medical science; and 3) in any event, Ms. Bell's alleged MCS was not caused by her work at IHC. Finally, Judge Sessions concluded that Ms. Bell had not shown she was entitled to permanent total disability compensation.<sup>1</sup>

Ms. Bell once again requests review of Judge Sessions' decision. Ms. Bell does not contest the dismissal of her worker's compensation claim. However, regarding her occupational disease claim, Ms. Bell contends she provided timely notice of that claim to IHC and that a medical panel should be appointed to evaluate the medical aspects of the claim.

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<sup>1</sup> Judge Sessions addressed these issues in different sequence. The Appeals Board has rearranged the issues to conform with our discussion.

**FINDINGS OF FACT**

The following facts are relevant to the issues presented by Ms. Bell's motion for review.

Ms. Bell began working as a nurse for IHC in 1988. Shortly thereafter, she experienced allergic symptoms. By 1991, she had come to believe that these symptoms were caused by work-related exposure to various chemicals. Nevertheless, she worked continuously for IHC and other hospitals for the next nine years. Ms. Bell notified IHC of her medical problems on July 25, 2000. She stopped working on September 29, 2000.

Dr. Remington and Dr. Simmons, two of Ms. Bell's treating physicians, attribute Ms. Bell's illness to her exposure to chemicals while working at IHC. However, other medical evidence indicates that Ms. Bell's illness is caused by non-work factors.

**DISCUSSION**

**Timely notification.** As a threshold issue, Judge Sessions concluded that Ms. Bell's occupational disease claim was barred because she failed to notify IHC of her alleged disease within the 180-day notice period established by § 34A-3-108(2)(a) of the Utah Occupational Disease Act. Specifically, Judge Sessions concluded that, by 1991, Ms. Bell believed her allergy symptoms were caused by her work, but she did not notify IHC until July 2000.

Subsection (2)(a) of §108 requires an employee to notify his or her employer of an occupational disease within 180 days after the employee's "cause of action" arises. Subsection (2)(b) of § 108 provides that an occupational disease "cause of action" does not arise until **two** events have **both** occurred: 1) the employee knows, or should know, that his or her disease is caused by work; and 2) the employee has suffered disability as a result of the disease. Because Ms. Bell believed as early as 1991 that her work caused her allergy symptoms, she satisfied the first prerequisite to a cause of action on that date. However, she did not satisfy the second prerequisite—actually suffering disability—until September 2000, when she stopped working. By that time she had already notified her employer of her alleged occupational disease. Consequently, her claim is not barred by § 108(2)'s 180-day notice requirement.

**Medical panel referral.** Section 34A-2-601 of the Utah Workers' Compensation Act authorizes ALJs to appoint panels of impartial experts to evaluate the medical aspects of disputed workers' compensation and occupational disease claims. The Commission's Rule R602-2-2 describes the circumstances in which a medical panel will be appointed as including those cases involving a significant medical issue as shown by conflicting medical reports.

The diagnosis and etiology of Ms. Bell's allergy symptoms involves a significant medical issue. The existing record discloses a conflict of medical opinions on this point. The Appeals Board

**ORDER OF REMAND**  
**SUSAN BELL**  
**PAGE 3 OF 3**

therefore concludes that the Commission's Rule R602-2-2 requires appointment of an impartial panel of medical experts to evaluate and report on the medical aspects of Ms. Bell's occupational disease claim.

**Summary.** Having concluded that Ms. Bell's occupational disease claim is not barred by § 34A-3-108(2)(a) and that a medical panel must be appointed to consider the medical aspects of that claim, the Appeals Board remands this matter to the Commission's Adjudication Division for further proceedings consistent with this decision and for issuance of a new decision on the merits of Ms. Bell's claim.

**ORDER**

The Appeals Board sets aside Judge Sessions' decision of October 14, 2005, and remands this matter to the Adjudication Division for further proceedings consistent with this decision. It is so ordered.

Dated this 2<sup>nd</sup> day of May, 2008.

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Colleen S. Colton, Chair

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Patricia S. Drawe

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Joseph E. Hatch